

Beth A. Wilkinson (*pro hac vice*)  
 bwilkinson@wilkinsonstekloff.com  
 Rakesh N. Kilaru (*pro hac vice*)  
 rkilaru@wilkinsonstekloff.com  
 Kieran Gostin (*pro hac vice*)  
 kgostin@wilkinsonstekloff.com  
 Grace Hill (*pro hac vice*)  
 ghill@wilkinsonstekloff.com  
 Anastasia M. Pastan (*pro hac vice*)  
 apastan@wilkinsonstekloff.com  
 WILKINSON STEKLOFF LLP  
 2001 M Street NW, 10th Floor  
 Washington, DC 20036  
 Telephone: (202) 847-4000  
 Facsimile: (202) 847-4005

Bambo Obaro  
 bambo.obaro@weil.com  
 WEIL, GOTSHAL AND MANGES  
 201 Redwood Shores Parkway  
 Redwood Shores, CA 94065  
 Telephone: (650) 802-3083

Counsel for Microsoft Corporation

[Additional Counsel Identified on Signature Page]

UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

MICROSOFT CORPORATION and  
 ACTIVISION BLIZZARD, INC.,

Defendants.

Case No. 3:23-cv-02880-JSC

**ADMINISTRATIVE MOTION TO SEAL  
 AND FOR *IN CAMERA* TREATMENT OF  
 CERTAIN EXHIBITS PURSUANT TO  
 CIVIL L.R. 7-11 AND 79-5**

Dept.: Courtroom 8—19th Floor  
 Judge: Honorable Jacqueline S. Corley

Pursuant to Civil Local Rules 7-11 and 79-5(c), Defendant Microsoft Corporation (“Microsoft”) respectfully moves this Court for an order to maintain under seal and for *in camera* treatment of certain exhibits to be introduced by Plaintiff Federal Trade Commission (“FTC” or “Plaintiff”) and Defendants’ (collectively, the “Parties”) on June 29, 2023, particularly in connection with the witness examinations of Steve Singer (Nintendo), Amy Hood (Microsoft), and Tim Stuart (Microsoft).

Below, Microsoft has identified highly confidential material found in these exhibits, along with the specific bases for sealing required under Local Rule 79-5. The proposed sealing and *in camera* treatment set forth in the chart reflects Microsoft’s good-faith efforts to narrowly seek sealing or *in camera* treatment of only that information which is competitively sensitive, the public disclosure of which would cause injury to Microsoft that cannot be avoided through any more restrictive alternative means.

Document	Portions to Be Filed Under Seal	Designating Party	Basis for Sealing Request <sup>1</sup>
<b>Defendants’ Exhibit List</b>			
RX5060 (Singer)	Redacted version forthcoming	Microsoft	This document contains non-public and highly sensitive information including, but not limited to, potential business partnerships, internal decision-making processes, investment decisions, and strategic evaluation of forward-looking opportunities, which could be used to injure Microsoft if made publicly available.
RX5060A (Singer)	Redacted version forthcoming	Microsoft	This document contains non-public and highly sensitive information including, but not limited to, potential business partnerships, internal decision-making processes, investment decisions, and strategic evaluation of forward-looking opportunities, which could be used to injure Microsoft if made publicly available.

<sup>1</sup> Legitimate private interests warrant sealing or *in camera* treatment of the Microsoft information in this chart, and the unsealing of the information would result in injury to Microsoft that cannot be avoided through any less restrictive alternatives.

**Plaintiff's Exhibit List**

PX3218 (Singer)	Redacted version forthcoming	Microsoft	This document contains non-public and highly sensitive information including, but not limited to, potential business partnerships, internal decision-making processes, investment decisions, and strategic evaluation of forward-looking opportunities, which could be used to injure Microsoft if made publicly available.
PX3225 (Singer)	Redacted version forthcoming	Microsoft	This document contains non-public and highly sensitive information including, but not limited to, potential business partnerships, internal decision-making processes, investment decisions, and strategic evaluation of forward-looking opportunities, which could be used to injure Microsoft if made publicly available.
PX3233 (Singer)	Redacted version forthcoming	Microsoft	This document contains non-public and highly sensitive information including, but not limited to, potential business partnerships, internal decision-making processes, investment decisions, and strategic evaluation of forward-looking opportunities, which could be used to injure Microsoft if made publicly available.
PX3234 (Singer)	Redacted version forthcoming	Microsoft	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, and strategic evaluation of forward-looking opportunities, which could be used to injure Microsoft if made publicly available.
PX4029 (Hood)	Document withheld; <i>in camera</i> treatment	Microsoft	This document contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, and discussions of business strategy, which could be used to injure Microsoft if made publicly available.
PX4031 (Hood)	Redacted version forthcoming	Microsoft	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, and

			discussions of business strategy, which could be used to injure Microsoft if made publicly available.
PX1116 (Stuart)	Document withheld; <i>in camera</i> treatment	Microsoft	This document contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, and financial information and projections, which could be used to injure Microsoft if made publicly available.
PX1190 (Stuart)	Document withheld; <i>in camera</i> treatment	Microsoft	This document contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, and financial information and projections, which could be used to injure Microsoft if made publicly available.
PX1214 (Stuart)	Document withheld; <i>in camera</i> treatment	Microsoft	This document contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, market share analyses, and financial information and projections, which could be used to injure Microsoft if made publicly available.
PX1966 (Stuart)	Document withheld; <i>in camera</i> treatment	Microsoft	This document contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, and discussions of business strategy, which could be used to injure Microsoft if made publicly available.
PX4181 (Stuart)	Document withheld; <i>in camera</i> treatment	Microsoft	This document contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, strategic evaluation of forward-looking opportunities, and discussions of business strategy, which could be used to injure Microsoft if made publicly available.

PX4334 (Stuart)	Document withheld; <i>in camera</i> treatment	Microsoft	This document contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, and financial information and projections, which could be used to injure Microsoft if made publicly available.
PX4472 (Stuart)	Document withheld; <i>in camera</i> treatment	Microsoft	This document contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, and discussions of business strategy, which could be used to injure Microsoft if made publicly available.
PX4476 (Stuart)	Document withheld; <i>in camera</i> treatment	Microsoft	This document contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, and discussions of business strategy, which could be used to injure Microsoft if made publicly available.
PX1151 (Stuart)	Redacted version forthcoming	Microsoft	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, financial information and projections, and discussions of business strategy, which could be used to injure Microsoft if made publicly available.
PX1785 (Stuart)	Redacted version forthcoming	Microsoft	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, and discussions of business strategy, which could be used to injure Microsoft if made publicly available.
PX1851 (Stuart)	Redacted version forthcoming	Microsoft	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, financial information and projections, and discussions of business strategy, which could be used to injure Microsoft if made publicly available.

PX4325 (Stuart)	Redacted version forthcoming	Microsoft	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, financial information and projections, and discussions of business strategy, which could be used to injure Microsoft if made publicly available.
PX4361 (Stuart)	Redacted version forthcoming	Microsoft	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, strategic evaluation of forward-looking opportunities, financial information and projections, potential business partnerships, and discussions of business strategy, which could be used to injure Microsoft if made publicly available.
PX4365 (Stuart)	Redacted version forthcoming	Microsoft	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, and discussions of business strategy, which could be used to injure Microsoft if made publicly available.
PX4367 (Stuart)	Redacted version forthcoming	Microsoft	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, financial information and projections, and discussions of business strategy, which could be used to injure Microsoft if made publicly available.
PX4376 (Stuart)	Redacted version forthcoming	Microsoft	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, financial information and projections, and discussions of business strategy, which could be used to injure Microsoft if made publicly available.
PX4380 (Stuart)	Redacted version forthcoming	Microsoft	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, strategic evaluation of forward-looking opportunities, and assessment of the competitive landscape,

			which could be used to injure Microsoft if made publicly available.
PX4905 (Stuart)	Redacted version forthcoming	Microsoft	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, financial information and projections, and discussions of business strategy, which could be used to injure Microsoft if made publicly available.

### **ARGUMENT**

#### **I. Sealing and/or *In Camera* Treatment of the Exhibits Is Warranted Under Ninth Circuit Precedent as They Contain Microsoft’s Confidential Business Information**

In the Ninth Circuit, “[p]arties seeking to seal judicial records relating to motions that are ‘more than tangentially related to the underlying cause of action,’ bear the burden of overcoming the presumption with ‘compelling reasons supported by specific factual findings that outweigh the general history of access and the public policies favoring disclosure.’” *Lenovo (United States) Inc. v. IPCom GmbH & Co., KG*, 2022 WL 2313948, at \*1 (N.D. Cal. Jun. 28, 2022); *see also Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006) (“[T]he court must ‘conscientiously [] balance the competing interests’ of the public and the party who seeks to keep certain judicial records secret.”). Courts in this Circuit regularly find that sealing is warranted where the records or information that are sought to be sealed could be used “as sources of business information that might harm a litigant’s competitive standing.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978); *see also In re Elec. Arts, Inc.*, 298 F. App’x 568, 569 (9th Cir. 2008) (same); *Velasco v. Chrysler Grp. LLC*, No. CV 13-08080 DDP (VBK), 2017 WL 445241, at \*2 (C.D. Cal. Jan. 30, 2017) (stating that “district courts in this Circuit have sealed records containing ‘information about proprietary business operations, a company’s business mode or agreements with clients,’ [and] ‘internal policies and strategies’”) (internal citations omitted).

“The Ninth Circuit has explained that ‘in general, compelling reasons sufficient to outweigh the public’s interest in disclosure and justify sealing court records exist when such court files might have



1 become a vehicle for improper purposes, such as the use of records to . . . release trade secrets.” *Velasco*,  
 2 2017 WL 445241, at \*2 (quoting *Elec. Arts*, 298 F. App’x at 569); *see also Elec. Arts*, 298 F. App’x at  
 3 569 (“A ‘trade secret may consist of any formula, pattern, device or compilation of information which  
 4 is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors  
 5 who do not know or use it.”) (citation omitted). A court has “broad latitude” to grant protective orders  
 6 to prevent disclosure of “many types of information, including, but not limited to, trade secrets or other  
 7 confidential research, development, or commercial information.” *Phillips ex rel. Estates of Byrd v. Gen.*  
 8 *Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002).

9 In determining whether a document should be filed under seal, courts consider, among other  
 10 things, the measures taken to guard the information’s secrecy and the value of the information to the  
 11 business or its competitors. *E.g., Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206,  
 12 1212 (9th Cir. 2002). Here, Microsoft seeks to seal narrowly tailored excerpts of exhibits that reference  
 13 and reflect, among other things, confidential, proprietary information relating to Microsoft’s internal  
 14 decision-making processes, investment decisions, strategic evaluation of forward-looking opportunities,  
 15 market share analyses, assessments of the competitive landscape, business partnerships, terms of existing  
 16 confidential agreements, financial information and projections, and internal presentations discussing  
 17 business strategy. The disclosure of this information could be used to injure Microsoft if made publicly  
 18 available.

## 19 **II. Sealing and/or *In Camera* Treatment of the Exhibits Is Necessary to Protect Microsoft’s** 20 **Confidential and Proprietary Business Information**

21 Microsoft seeks sealing and/or *in camera* treatment of the exhibits as they contain Microsoft’s  
 22 non-public and highly sensitive information from documents obtained during the course of the FTC’s  
 23 investigation and during litigation discovery. Examples of such confidential information include, but  
 24 are not limited to, Microsoft’s internal decision-making processes, investment decisions, strategic  
 25 evaluation of forward-looking opportunities, market share analyses, assessments of the competitive  
 26 landscape, business partnerships, terms of existing confidential agreements, financial information and  
 27 projections, and internal presentations discussing business strategy. Disclosure of this information  
 28 would provide Microsoft’s competitors with private data about Microsoft’s performance and business



1 strategy, which could harm Microsoft's competitive standing. *See Cont'l Auto. Sys. v. Avanci, LLC*, No.  
 2 19-cv-02520-LHK, 2019 WL 6612012, at \*4 (N.D. Cal. Dec. 5, 2019). Thus, the unsealing of this highly  
 3 confidential and sensitive information would cause injury to Microsoft that cannot be avoided through  
 4 less restrictive alternatives.

5 Finally, Microsoft provided the FTC with the confidential business information contained in  
 6 exhibits pursuant to the statutory and regulatory guarantees of confidentiality contained in the Hart-  
 7 Scott-Rodino Act or the FTC Act. *See* 15 U.S.C. §§ 18a(h), 46(f), 57b-2(b), 57b-2(c); 6 C.F.R. § 4.10(d)-  
 8 (g). In similar cases, the FTC has acknowledged the need to maintain the confidentiality of a party's  
 9 confidential business information that has been provided to the FTC via a regulatory request. *See, e.g.,*  
 10 *FTC v. Lockheed Martin Corp.*, 2022 WL 1446650, at \*2 (D.D.C. Jan. 25, 2022) ("According to the  
 11 FTC, sealing the complaint is appropriate . . . because the filing includes confidential information  
 12 submitted . . . pursuant to 'statutory and regulatory guarantees of confidentiality.' . . . The requested  
 13 sealing covers only confidential information and is, according to the FTC, required by regulation.").

### 14 **III. Conclusion**

15 As stated above, compelling reasons justify Microsoft's request for sealing the confidential  
 16 business information contained in the exhibits. Microsoft respectfully requests that this Court grant its  
 17 Administrative Motion for sealing and/or *in camera* treatment of the exhibits as identified herein. In  
 18 accordance with Civil Local Rule 7-11, Microsoft has also filed a Proposed Order herewith.

19  
 20 Dated: June 29, 2023

Respectfully submitted,

21 By: /s/ Beth Wilkinson

22 Jack DiCanio (SBN 138782)  
 23 Caroline Van Ness (SBN 281675)  
 24 SKADDEN, ARPS, SLATE, MEAGHER  
 & FLOM LLP  
 525 University Avenue  
 25 Palo Alto, California 94301  
 Telephone: (650) 470-4500  
 26 Facsimile: (213) 621-5430  
 27 jack.dicanio@skadden.com  
 caroline.vanness@skadden.com

Beth Wilkinson (*pro hac vice*)  
 Rakesh N. Kilaru (*pro hac vice*)  
 Kieran Gostin (*pro hac vice*)  
 James Rosenthal (*pro hac vice*)  
 Grace Hill (*pro hac vice*)  
 Anastasia M. Pastan (*pro hac vice*)  
 Jenna Pavelec (*pro hac vice*)  
 WILKINSON STEKLOFF LLP  
 2001 M Street, N.W., 10th Floor  
 Washington, D.C. 20036  
 Telephone: (202) 847-4000  
 Facsimile: (202) 847-4005

28 Steven C. Sunshine (*pro hac vice*)

1 Julia K. York (*pro hac vice*)  
 2 SKADDEN, ARPS, SLATE, MEAGHER  
 & FLOM LLP  
 3 1440 New York Avenue, N.W.  
 Washington, DC 20005-2111  
 4 Telephone: (202) 371-7000  
 Facsimile: (202) 393-5760  
 5 steven.sunshine@skadden.com  
 julia.york@skadden.com

6 Maria Raptis (*pro hac vice*)  
 7 Matthew M. Martino (*pro hac vice*)  
 8 Michael J. Sheerin (*pro hac vice*)  
 Evan R. Kreiner (*pro hac vice*)  
 9 Bradley J. Pierson (*pro hac vice*)  
 Jessica R. Watters (*pro hac vice*)  
 10 SKADDEN, ARPS, SLATE, MEAGHER  
 & FLOM LLP  
 11 1 Manhattan West  
 New York, NY 10001  
 12 Telephone: (212) 735-3000  
 Fax: (212) 735-2000  
 13 maria.raptis@skadden.com  
 14 matthew.martino@skadden.com  
 15 michael.sheerin@skadden.com  
 16 evan.kreiner@skadden.com  
 17 bradley.pierson@skadden.com  
 jessica.watters@skadden.com

18 *Counsel for Defendant Activision Blizzard,*  
 19 *Inc.*

bwilkinson@wilkinsonstekloff.com  
 rkilaru@wilkinsonstekloff.com  
 jrosenthal@wilkinsonstekloff.com  
 kgostin@wilkinsonstekloff.com  
 ghill@wilkinsonstekloff.com  
 apastan@wilkinsonstekloff.com  
 jpavelec@wilkinsonstekloff.com  
 Jonathan E. Nuechterlein (*pro hac vice*)  
 C. Frederick Beckner III (*pro hac vice*)  
 William R. Levi (*pro hac vice*)  
 Daniel J. Hay (*pro hac vice*)  
 Lucas Croslow (*pro hac vice*)  
 Manuel Valle (*pro hac vice*)  
 Aaron P. Haviland (*pro hac vice*)  
 SIDLEY AUSTIN LLP  
 1501 K Street, N.W.  
 Washington, D.C. 20005  
 jnuechterlein@sidley.com  
 rbeckner@sidley.com  
 william.levi@sidley.com  
 dhay@sidley.com  
 lcroslow@sidley.com  
 manuel.valle@sidley.com  
 ahaviland@sidley.com  
 Bambo Obaro (SBN 267683)  
 WEIL, GOTSHAL & MANGES LLP  
 201 Redwood Shores Parkway  
 Redwood Shores, CA 94065  
 Telephone: (650) 802-3083  
 Facsimile: (650) 802-3100  
 bambo.obaro@weil.com  
 Megan A. Granger (*pro hac vice*)  
 Michael Moiseyev (*pro hac vice*)  
 WEIL, GOTSHAL & MANGES LLP  
 2001 M Street, NW  
 Suite 600  
 Washington, DC 20036  
 Telephone: (202) 682-7000  
 Facsimile: (202) 857-0940  
 megan.granger@weil.com  
 michael.moiseyev@weil.com

*Counsel for Defendant Microsoft Corp.*